

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.86.1801, 37.86.1802, and) PROPOSED AMENDMENT
37.86.1807 pertaining to durable)
medical equipment (DME))

TO: All Concerned Persons

1. On November 26, 2008, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on November 17, 2008, to advise us of the nature of the accommodation that you need. Please contact Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-1970; or e-mail dphhslegal@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.86.1801 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, DEFINITIONS (1) "Durable medical equipment and supplies" means the most economical ~~and medically necessary~~ equipment or supplies that are medically necessary to treat a health problem or a physical condition. The equipment or supplies must be appropriate for use in a patient's home, residence, school, or workplace. Equipment or supplies that are useful or convenient, but are not medically necessary to treat an illness or injury do not qualify for Medicaid coverage. ~~as outlined in ARM 37.86.1802(4) including, but not limited to, wheelchairs, walkers, canes, crutches, hospital beds, oxygen equipment, and sickroom equipment.~~

(2) ~~"Medical supplies" means disposable or nonreusable medical supplies, including, but not limited to, splints, bandages, and oxygen.~~

(3) through (5)(b) remain the same but are renumbered (2) through (4)(b).

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-6-101, 53-6-141, 53-2-201, 53-6-113, MCA

37.86.1802 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, GENERAL REQUIREMENTS (1) remains the same.

(2) Reimbursement for prosthetic devices, durable medical equipment, and medical supplies shall be limited to items delivered in the most appropriate and cost effective manner. The items must be medically necessary and prescribed in accordance with (2)(a) by a physician or other licensed practitioner of the healing arts within the scope of his practice as defined by state law.

(a) The prescription must indicate the diagnosis, the medical necessity, and projected length of need for prosthetic devices, durable medical equipment, and medical supplies. The original prescription must be retained in accordance with the requirements of ARM 37.85.414. Prescriptions may be transmitted by an authorized provider to the durable medical equipment provider by electronic means or pursuant to an oral prescription made by an individual practitioner and promptly reduced to hard copy by the durable medical equipment provider containing all information required. Prescriptions for durable medical equipment, prosthetics, and orthotics (DMEPOS) shall follow the Medicare guidelines criteria outlined in chapters 3 and 4 of the Region D Medicare Supplier Manual (~~July 1, 2007~~ January 1, 2009), which is adopted and incorporated by reference. A copy of the Region D Medicare Supplier Manual may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951. For items requiring prior authorization the provider must include a copy of the prescription when submitting the prior authorization request.

(i) Prescriptions for oxygen shall include the liter flow per minute, the hours of use per day, and the recipient's PO₂ or oxygen saturation blood test(s) results.

(b) Subject to the provisions of (3), medical necessity for oxygen is determined in accordance with the Medicare criteria outlined in the Medicare Durable Medical Equipment Regional Carrier (DMERC) Region D Supplier Manual, (~~July 1, 2007~~ January 1, 2009), Local Coverage Determination (LCD) and policy articles (~~July 1, 2007~~ January 1, 2009), and National Coverage Determination (NCD) (~~July 1, 2007~~ January 1, 2009), which are adopted and incorporated by reference. A copy of the Medicare criteria may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(c) through (7) remain the same.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-6-101, 53-6-113, 53-6-141, MCA

37.86.1807 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, FEE SCHEDULE (1) remains the same.

(2) Prosthetic devices, durable medical equipment, and medical supplies shall be reimbursed in accordance with the department's Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Fee Schedule, effective ~~January 2008~~ 2009, which is adopted and incorporated by reference. A copy of the department's fee schedule is posted at the Montana Medicaid provider web site at <http://medicaidprovider.hhs.mt.gov>. A copy of the department's Prosthetic Devices, Durable Medical Equipment, and Medical Supplies Fee Schedule may also be

obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951. (3) through (4) remain the same.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, MCA

4. The Department of Public Health and Human Services (the department), Health Resource Division administers the Montana Medicaid program, which provides medical assistance to qualified low income and disabled residents of Montana. The state of Montana and the federal government jointly fund the program. The Montana Medicaid program pays enrolled providers for services to eligible individuals. Prosthetic devices, durable medical equipment (DME), and medical supplies are covered services under Medicaid.

These rule changes are necessary to remove ambiguity from the definition of DME and supplies and update the year referenced for federal material to adopt by reference current federal laws, regulations, criteria, and manuals.

ARM 37.86.1801

The definition of DME and supplies is amended to remove a list of items in the definition that were examples only and were not useful to define the terms. The new language is not a change of policy regarding coverage of DME or supplies. The language accurately states what Montana Medicaid pays for as DME and supplies. Medicaid only pays for equipment and supplies that are necessary to treat illnesses and medical conditions. Also, Medicaid only pays for the least expensive item or supply. Equipment may be useful or convenient for a Medicaid recipient or the caregiver but, unless it is also medically necessary, Medicaid does not pay for it.

ARM 37.86.1802 and 37.86.1807

Montana Medicaid incorporates by reference federal statute, regulations, criteria guidelines, materials, and manuals to administer the state program. These rule changes update the reference dates of this federal material to incorporate the most recent information.

Fiscal Effects

These rule amendments will have a state fiscal year budget impact of approximately \$400 in general funds and \$1,000 in federal funds.

Persons and entities affected

The amendments impact approximately 637 providers and 77,000 Medicaid recipients. DPHHS considered the alternative of not amending the rules to adopt the

current manuals and using prior year reference material instead. This alternative was rejected because providers, recipients, and program administrators prefer to use current DME information.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-1970; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., December 4, 2008.

6. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

10. The department intends for the proposed amendment of these rules to be effective January 1, 2009.

/s/ Geralyn Driscoll
Rule Reviewer

/s/ Russell E. Cater for
Joan Miles, Director
Public Health and Human Services

Certified to the Secretary of State October 27, 2008.